

J. E. SIMPSON & CO.

FEBRUARY 18, 1904.—Ordered to be printed.

Mr. STEWART, from the Committee on Claims, submitted the following

REPORT.

[To accompany S. 3952.]

The Committee on Claims, to whom have been referred Senate bills 33 and 3952, for the relief of the surviving copartners of the firm of J. E. Simpson & Co., report as follows:

This committee had under consideration a bill for the relief of these claimants, which provided for the reference of their claim to the Court of Claims for adjudication upon its equities, in the Fifty-sixth Congress, and a favorable report was made by Senator Depew upon the said bill (S. 272, first session). The following is the report on that bill:

[Senate Report No. 1061, Fifty-sixth Congress, first session.]

The Committee on Claims, to whom was referred the bill (S. 272) for the relief of the members of the firm of J. E. Simpson & Co. through the reference of their claim to the Court of Claims, have had the same under consideration and report as follows:

This claim grows out of the transactions of the United States and the firm of J. E. Simpson & Co. in the construction of a naval dry dock at the New York Navy-Yard during the years 1887 to 1890.

By an act of Congress approved March 3, 1887, provision was made for the construction of two timber dry docks, to be located at navy-yards to be designated by the Secretary of the Navy. The Secretary selected those at New York and Norfolk. On April 19, by direction of the Secretary, an advertisement was published by which dry-dock builders were invited to present bids for the construction of the docks, each bidder being required to submit plans and specifications. For information with regard to the location and sites selected for the docks, prospective bidders were referred to the commandants of the navy-yards named.

On May 23, 1887, the commandant of the New York Navy-Yard was instructed to have the civil engineer stationed at that yard ascertain at once, for the information and use of the prospective bidders, the nature of the soils underlying the site selected for the dry dock to be constructed, which soils would have to be excavated in making the pit or basin of the dock, and also to ascertain to what depth, if any, below the line of low watermark it would be necessary to have piling driven to secure a proper foundation. This letter was referred to P. C. Aperson, the civil engineer stationed at the New York Navy-Yard, for his information and guidance in making a proper investigation of and report upon the site and in communicating the information thus obtained to prospective bidders.

[The letter was as follows:

BUREAU OF YARDS AND DOCKS, NAVY DEPARTMENT,
Washington, D. C., May 23, 1887.

SIR: To enable the dry dock builders who may appear at the yard under your command for information concerning the proposed new timber dry dock, particularly regarding the foundation of the site selected for the dock, I am instructed by the chief of the Bureau to request you to direct the civil engineer of the yard to have the necessary borings made at once with a view of ascertaining the nature of the soil to be excavated for the pit or basin of the dock, as well as to what depth, if any, below the line of watermark it will be necessary to have the piling driven to secure a proper foundation for the structure.

Very respectfully, your obedient servant,

A. E. MERRITT,
Chief Clerk and Acting Chief of Bureau.

TO COMMANDANT OF NEW YORK NAVY-YARD.

(Page 257 of Court of Claims Record.)]

It is a fact well recognized by engineers that the character of the soil underlying any piece of land may be ascertained by means of borings properly made, and if quicksand or other unstable materials are present, that fact can be learned. Plans and specifications for a dry dock can not be prepared unless the designer knows the location and character of the site, in order that he may determine the degree of support which the structure will receive from underlying and surrounding soils, and from this may calculate and make provision to meet the strain to which each part of the dock will be subjected, and, more than all else, may calculate and determine to what depth, if any, below low watermark it will be necessary to have the piling driven to secure a proper foundation. These facts having been determined, proper plans and specifications can be prepared, the amount of labor and material needed to construct the dock can be determined, and the prospective bidder can estimate the cost thereof very closely.

Under his instructions from the commanding officer the civil engineer proceeded to make borings upon the site selected for the dock and prepared a report and profile, in which he purported to give the result of his investigation.

Pursuant to the invitation contained in the advertisement, Alfred H. Simpson, acting for the firm of J. E. Simpson & Co., applied to the commandant of the New York Navy-Yard for information with regard to the location and site selected for the dock at that yard. The commandant referred him to the engineer, and the engineer referred him back to the commandant. The commandant then referred him to the Chief of the Bureau of Yards and Docks. Simpson came to Washington, called on the chief of the Bureau, explained that he wished to get the information offered by the advertisement, and was directed by the chief of Bureau to examine Aperson's profile and report, which were on file in the Bureau. These were examined by Simpson, who found that they purported to represent the nature of each stratum of soil underlying the site, and that these showed that the site would afford an excellent foundation for a dry dock, with no unstable soils or other difficulties to be encountered.

[The Supreme Court (U. S. Reports 171-174, p. 371) says as a fact: "It may be conceded that this profile plan indicated that the soil at the point referred to was stable and contained no quicksand."]

The profile and report did not show the method adopted by the civil engineer in making his borings; but it was reasonable to suppose that the Government had assigned this important work to a competent and careful man, and that it had been properly done. Simpson was an engineer of very large experience. Using the information obtained from the profile and report as a basis, he prepared plans and specifications and an estimate of the cost of the dock. Later the commandant of the New York Navy-Yard, at the request of Simpson & Co., gave them a copy of Civil Engineer Aperson's profile. This was used to verify Simpson's calculations. The property being owned and controlled absolutely by the Government, the firm had no other source of information.

The firm presented a bid for the construction of a dock at the New York Navy-Yard and also that at the Norfolk Navy-Yard, the price named being \$1,061,000 for both. This bid was accepted. A formal contract was prepared by the Navy Department and duly executed by the Simpsons and the Chief of the Bureau of Yards and Docks. Annexed to and made part of it were the advertisement, specifications, bid, and acceptance. These provided that the docks should be built upon available sites to be furnished by the Government.

The contract work was promptly begun by the Simpsons and all materials necessary to complete the dock were procured. For about a year the work progressed well. Everything done had been approved by the Government and the contractors had been paid over \$240,000 on account of the contract price.

In August, 1888, the work had reached a proper stage for the construction of the pit or basin of the dock. This involved the removal of the surface soils and the excavation of those below. The excavation had reached a level of about 26 feet below grade, when the contractors discovered that the soils underlying the site were not as represented in Aperson's profile and report, and below that depth there was a vast stratum of quicksand about 70 feet in depth underlying the entire site and extending beyond it. This quicksand was very unstable and flowed as readily as water. Flowing from under the banks or sides of the partially completed structure, it broke and destroyed the piling and timbers that had been put in place and filled the pit or basin nearly as fast as it could be excavated.

These facts were promptly reported to the engineer in charge, and by him to the chief of the Bureau of Yards and Docks, who, shortly after the discovery of the quicksand, visited the site and directed the contractors to proceed with the work in spite of the difficulties encountered. At that time the engineer said to the chief of the Bureau that the Simpsons should be paid from \$100,000 to \$150,000 for the extra work that they had already done and would be obliged to do before the dock could be completed, that is to say, work which was not contemplated by the United States or the contractors when the bid was presented and the contract executed.

Before proceeding with the work upon the structure proper the Simpsons were obliged to drive a large amount of extra piling for the purpose of confining the quicksand and rendering the foundation sufficiently stable to support the dock. In June, 1890, the structure was completed and then accepted by the United States.

From time to time the contractors were paid sums which aggregated the price named in the contract, but they have never been paid anything for extra material and labor, the necessity for which was occasioned by the presence of the quicksand. The Simpsons accepted these sums as paid to them, including a reservation of 10 per cent which was retained by the United States until the dock had been accepted; but the Simpsons did not give the United States a final release, which the contract provided should be given upon payment of the reservation. Over and above the labor and materials which were employed in the construction of the dock proper, labor and materials of the value of \$197,316.35 were employed in repairing the damage done by the quicksand and in making the foundation one upon which a dry dock could be built.

The Simpsons were not at fault. They were induced to make their bid by the information furnished them, as prospective bidders, by the Navy Department. They entered into the contract relying upon the correctness of that information. Their damage and loss was wholly due to the fact that the information was incorrect. The report and profile made by Aperson were accepted as correct by the Navy Department as well as by the Simpsons, but his work was negligently done, and his report and profile correspondingly misleading.

Some two years after the completion of the dry dock the Simpsons brought a suit in the Court of Claims, by which they sought to recover the value of the extra labor and material furnished by them and accepted and used by the United States as above related. The evidence of many witnesses was taken on behalf of the claimants, and that of Civil Engineer Aperson on behalf of the United States. While the court made findings of fact which present the case as it is stated in this report, with the exception of the amount expended by the Simpsons for extras, which it did not pass upon at all, judgment was entered dismissing the petition. In the opinion filed the court said that the transactions of the parties prior to the execution of the contract could not vary its terms; that the Simpsons assumed all risk with regard to the character of the site selected by the Government for the dock; and that they were obligated to construct the dock complete, no matter what kind of a foundation was encountered. On appeal, the Supreme Court affirmed the judgment of the Court of Claims. It was held that the contract alone could be considered, and that the representations made by the Navy Department with regard to the site could not alter the position of the contracting parties. It was also said that the Simpsons, if they intended to present this claim, should have refused to complete the dock without a supplemental contract in writing providing that extra work should be paid for.

[NOTE.—This was impossible. The quicksand flowed into the foundation in such volume that any cessation of work while awaiting a new contract would have permitted a total overflow and caused the ruin of the whole structure.]

The courts were bound by and followed the strict rule of the law of contract, which we believe has worked in this case a great hardship and injustice upon innocent

parties. While the whole difficulty was occasioned by the negligence or incapacity of the civil engineer employed by the Government, the Government received and has had the benefit of everything for which it bargained, while the contractors were obliged to furnish not only all that they or the Government contemplated, but, in addition, extra work and material of the value of nearly \$200,000. It is the policy of the Government to require fair dealing from those with whom it contracts; but it has not been its policy to reject the just and equitable claims of its citizens who contract with it.

In cases similar to that of the Simpsons Congress has provided a means whereby claimants could obtain relief to which they were justly and equitably entitled. It seems fair that this account should be adjusted and paid. Inasmuch as it is lengthy and the various items have not been passed upon by the Court of Claims, a reference to that court by means of this bill is considered desirable. A reference of the claim under the general laws would not accomplish the ends of justice.

Your committee recommend that the bill do pass.

This bill was referred to the Secretary of the Navy with the request that he forward to the committee all papers on file relating to the claim, together with an expression of the Department's opinion as to the merits thereof. The Department in reply to the committee's letter forwarded copies of the Court of Claims record in this case, and left the consideration of the equities of these claimants entirely with Congress.

Senate bill No. 33, one of the two bills now under consideration by the committee, directs the Secretary of the Navy to pay the sum claimed to have been expended for extra work and material, viz, \$197,316.35, to the claimants. This bill was referred by the committee to the Secretary of the Navy, with the request that the Bureau of Yards and Docks be instructed to report what amount is shown by its record and by the evidence in the Court of Claims to have been actually expended by Simpson & Co. for this extra work and material furnished. This information was desired because the Court of Claims made no finding of the amount. The Bureau reports that \$47,000 was expended by the firm over and above the work shown by the plans, but claims that the amount was covered by implication in the specifications. The Chief of Bureau also states that as the contractors made large profits on their contract for the Portsmouth dry dock that their profits on that contract should be considered in connection with their losses on the contract for the Brooklyn dry dock. This statement as to large profits on the Portsmouth dock the claimants deny.

The committee has called upon Rear-Admiral D. B. Harmony, U. S. Navy, for his views upon the merits of the present bill. The Admiral was Chief of the Bureau of Yards and Docks at the time the contract was made, and signed the contract as the representative of the Department and had supervision of the work. Admiral Harmony says that neither of the parties to the contract had in contemplation this extra work when the contract was made, and also states that had the Department built the dry dock it would have had to have done the extra work and to have paid for the labor and material to secure a proper foundation, just as the contractors did. The Admiral thinks the claim should be equitably settled, and recommends that the Government should pay one-half of the contractors' actual expense, but gives no reason why the whole amount expended by them should not be refunded. It is evident from the testimony filed with the committee that had the parties to the contract known before it was made that it would be necessary to spend money for material and labor, as the Simpsons did in order to secure a proper foundation, that provision would have been made in the contract for payment for the same.

It appears in the evidence taken in the Court of Claims in this case

that the Navy Department's representative on this work at the Brooklyn Navy Yard, Civil Engineer P. C. Asserson, U. S. Navy, stated to Rear Admiral Harmony, at the time the difficulties were encountered and before the work was finished, that the Simpsons should receive from \$100,000 to \$150,000 for the extra work.

Evidence taken in the Court of Claims and filed with the committee shows that after the bid of the Simpsons to build the dry docks at the Brooklyn and Norfolk navy-yards had been accepted by the Department Secretary Whitney requested these contractors to agree to increase the length of the two dry docks from 480 feet to 500 feet each, and this the firm did, without extra compensation, at a cost of \$40,000 to them over their bid.

The committee finds that this company was an old-established firm of the highest reputation, and that the extra expense they were subjected to in securing a proper foundation upon which to build the dry dock at Brooklyn reduced them to poverty; that the dry dock built by them is a credit to them as dry-dock builders and was extremely useful and valuable to the Government in the late war with Spain; that the work done was necessary and was for the benefit of the Government; that had the Government built the dock it would have had to pay the extra expense as the contractors have done, and the committee concurs in the report made by Senator Depew, before referred to, that "the strict rule of the law of contract * * * has worked in this case a great hardship and injustice to innocent parties," and "it seems fair that this account should be adjusted and paid." Your committee is of the opinion that the actual money expended by these contractors in this necessary work for which the Government has received the full benefit should be refunded to the claimants.

The committee can not undertake to determine the amount actually expended by the claimants, and as the Department estimate of the amount expended differs so materially from the sum claimed by the contractors, the committee recommends that substantial justice to both parties in this particular can only be obtained by referring both parties to the Court of Claims, as the committee decided was the best method of settlement when it authorized Senator Depew to report S. 272 during the Fifty-sixth Congress.

Your committee therefore reports back S. 3952, which confers jurisdiction on the court to hear and determine the claim on its equities, with the following amendment:

Strike out all after the enacting clause and insert the following:

That jurisdiction is hereby conferred on the Court of Claims to readjudicate the case of J. E. Simpson and Company against the United States, being number eighteen thousand and twenty-eight on the docket of the said court, upon the evidence therein and such further competent evidence as may be adduced by either party within such reasonable time as the court may fix and determine, and if the said court shall find upon such readjudication that the said firm sustained damage or loss in the construction of a timber-dry dock for the United States at the New York Navy-Yard during the years eighteen hundred and eighty-seven to eighteen hundred and ninety by reason of the fact that the soils underlying the site selected and provided for the said dry dock by the United States were unstable or were not as described by a profile and report, furnished to the said firm by agents of the United States, prior to the execution of the contract for the said dry dock between the said firm and the United States, the said court is hereby authorized and empowered to enter judgment in favor of the said firm for the amount of its damage or loss so found.

As thus amended your committee recommends the passage of S. 3952.

The committee recommends the indefinite postponement of S. 33, which directs the payment of the amount claimed by the contractors.

APPENDIX.

Cases in which the Supreme Court and the Court of Claims have, on strict and technical legal grounds, decided adversely to claimants against the United States and where Congress, to avoid injustice and oppression, has taken into consideration the equities of the parties and passed acts for their relief notwithstanding the court's decision.

In the case of Henderson's Distilled Spirits (14 Wallace, 44-69, 1871), the facts were these: A removal of distilled spirits from the place where distilled with the intent to defraud the United States of the tax thereon, was alleged as a ground for the forfeiture of said spirits. One Henderson was an innocent purchaser of these spirits after their removal and at the time they were in the Government bonded warehouse. He paid the Government tax and paid to the owner of the spirits their value. The Government contended that these goods had been previously forfeited to the United States in the hands of their antecedent owner, notwithstanding that Henderson was an innocent holder for value. The case came to the Supreme Court and that court in its majority opinion upheld the forfeiture and denied Henderson's rights. There was a strong minority opinion to the contrary filed by Justice Field, with whom concurred the Chief Justice and Justice Miller. The equities of Henderson, the innocent purchaser, having been presented to Congress, that body passed a relieving act refunding to him \$5,000, the amount of his loss on account of the purchase of the spirits aforesaid. The act of Congress was as follows:

"That the Secretary of the Treasury is hereby directed to refund and pay to John Henderson, out of any money not otherwise appropriated, the sum of \$5,000 in full satisfaction of the amount paid by Henderson upon a bond for the release of 100 barrels of spirits given by him as claimant under the order of the United States district court for the eastern district of Missouri, and upon which spirits the said Henderson in good faith had paid the taxes assessed by the United States officers.

"Approved February 17, 1879. (See 20 Stat. L., 600.)"

Congress thus made good the loss sustained by one of its citizens through the Government's intervention, on a showing of the claimant's equities, notwithstanding that the United States district court and the Supreme Court of the United States had decided under the strict letter of the law that the claimant had no legal remedy against the United States. Similarly the claimants in the case at issue (the surviving partners of Simpson & Co.) ask that Congress reimburse them for their loss. They agreed with the Government to build a dry dock on the assurance that they were to be given a stable foundation for said dock. Unknown to either party to the contract the foundation proved to be in part a quicksand.

The contract provided that the dock was to be built on a suitable site to be selected by the Government, and the site was so selected by the Government. Had the Simpsons known in advance the condition of the foundation upon which they were directed to build, they would either never have touched the job, or would have increased the amount of their bid more than \$200,000. Having more than half completed the dry-dock structure, their timbers began to sink because of the quicksand. Their contract was to be a completed dock, and they were compelled to proceed to make substantial the defective foundation in whose selection they had had no voice, and to replace the damaged portions of the dock. In so proceeding with the work in a bona fide manner these contractors sustained a loss of \$197,316.35. The Government does not deny or question the loss, but in the claimant's proceedings for recovery in the Court of Claims and the Supreme Court, the Government's attorneys fell back on the strict letter of the contract, which calls for a completed dock at a given price, and the contractors are left with their loss, notwithstanding that the Government received the full benefit of this extra work. It will be seen, therefore, that this case presents strong equities for the consideration of Congress and that Congress alone can afford these claimants relief.

In the case of Harvey & Livesey v. The United States the claimants were contractors in the War Department for a certain bridge. A disagreement arose as to what work the claimants were to do under the contract. Afterwards the contractors were stopped in their work by the Government officers. The contractors brought suit in the Court of Claims. The court gave judgment on certain small items, but held generally that the claimants were bound by the written contract and denied them relief on the more important items of their claim. (See 18 C. Cls. R., 470.) The case being presented to Congress for relief, that body passed the following act giving special jurisdiction to the Court of Claims to hear the case as a court of equity:

"That the claim of James W. Harvey and James Livesey for alleged labor done and material furnished under their contract with the United States for the building of the masonry work for the piers and abutments of the bridge across the Mississippi River

from Rock Island to Davenport, Iowa, bearing date June first, eighteen hundred and sixty-nine, be, and the same is hereby, referred to the Court of Claims for hearing and adjudication; and to that end jurisdiction is hereby conferred on said court to proceed in the adjustment of the accounts between said claimants and the United States as a court of equity jurisdiction, and may, if according to the rules and principles of equity jurisprudence, in its judicial discretion, re-form said contract, and render such judgment as justice and right between the claimants and the said Government may require."

The Court of Claims again denied the rights of Harvey & Livesey, notwithstanding the provisions of the act above quoted, and these claimants appealed to the Supreme Court of the United States, which court ordered that the Court of Claims reform the contract for the reason that there had been a mutual mistake between the contracting parties, etc. (See 105 U. S., 671.) Suit being again entered by the claimants in the Court of Claims, they recovered \$16,250.95, and on appeal to the Supreme Court of the United States the Supreme Court allowed them \$40,093.77.

While similar in principle to the case of Harvey & Livesey, in the Simpson case there was no such dispute on the facts as in that case. In Harvey & Livesey the Government officers under whose direction the bridge was built were inimical to the claim and denied the rights of the contractors. In the Simpson case the Government officer in charge stated that the Simpsons should have \$100,000 to \$150,000 extra for the additional work they were compelled to perform.

In the case of Elias C. Boudinot v. United States (18 C. Cls. R., 716), the claimant, a Cherokee Indian, was operating a tobacco factory in Indian Territory in the belief that under treaty stipulations between the Cherokees and the United States Government this industry could be carried on without the payment of taxes thereon to the United States. An act was passed extending the laws imposing tobacco taxes to articles anywhere in the United States. Thereafter the claimant's factory was seized, libeled, and sold for violation of the internal-revenue laws. The property seized was libeled in the United States district court for the western district of Arkansas; the court decided that the seizure was legal and that the property was properly forfeited. This decision the Supreme Court of the United States upheld on appeal.

Notwithstanding these decisions, Congress, being appealed to on the equities of the claimant, passed a relieving act, approved June 4, 1880 (21 Stat. L., 544), authorizing the claimant to bring an action in the Court of Claims "to recover what may be due to him in justice and equity for the loss inflicted upon him by reason of said seizure, for an alleged violation of the internal-revenue laws, of his property and damages thereto while under seizure, the value of the tobacco, material, etc., and the expenses which he has been subjected to thereby." The Court of Claims rendered judgment for \$3,272.25.

It will be seen that this case is directly in point with the Simpson case. Notwithstanding the technical decision against Boudinot, Congress directed that the claimant recover the amount due him in justice and equity and the expenses which he has been subjected to. This we ask Congress to do in the Simpson case.

Instances where Congress has made appropriation to cover losses and damages sustained by contractors performing Government work.

To T. & A. Walsh, of New York City, \$623.55, for materials lost and damages sustained on account of an accident which occurred August 8, 1896, to the caisson of dry dock No. 2, at the navy-yard, Brooklyn, N. Y., as estimated and determined by a board of officers of the navy-yard, directed to investigate and report thereupon, the board having found that the damages were not due to any negligence on the part of T. & A. Walsh. (See p. 37, omnibus claims act, approved May 27, 1902.)

To the Union Iron Works, at San Francisco, Cal., the sum of \$14,745.58, in full settlement of the amount claimed by said company, that being the amount audited and found due and recommended to be paid said company by the Secretary of the Navy for extra work and expenses in constructing the *Monterey*. (See p. 50, omnibus claims act, approved March 3, 1899.)

To the Portland Company, of Portland, Me., the sum of \$64,693.97 in excess of contract price for work done and material furnished in the construction of the machinery, engines, and boilers of the United States double-ender gunboats *Agawam* and *Pontoonuc*; to the administrator of the estate of George W. Lawrence, deceased, the sum \$13,777.24 in excess of contract price, for work done and material furnished in the construction of the hulls of the wooden double-ender gunboats *Agawam* and *Pontoonuc*; to George W. Quintard, of New York, the sum of \$68,163.30, in excess of contract price for work done and material furnished in the construction of the United States iron-clad vessel *Onondaga*; to Thomas F. Rowland, of the city of New York,

the sum of \$57,252 in excess of contract price for work done and material furnished in the construction of the United States double-ender gunboat *Muscoota*, being the amount found to be due, less 20 per cent, to each of the persons or companies named herein by the naval board convened by the Secretary of the Navy May 25, 1865, by virtue of a resolution adopted by the Senate of the United States March 9, 1865, and called the Selfridge Board, which shall be in full discharge of all claims against the United States on account of the vessels upon which the board made their allowance as per their report, Senate Executive Document No. 18, first session of the Thirty-ninth Congress. Total, \$203,868.34. (See p. 50, Omnibus claims act, approved March 3, 1899.)

That the Secretary of the Treasury be, and he is hereby, directed to pay to the Richmond Locomotive and Machine Works the sum of \$69,550, not otherwise appropriated, in full of its claim for damages and losses incurred in the construction of the armored battle ship *Texas*. (Approved May 7, 1898.)

Be it enacted, etc., That to carry out the provisions of the act making appropriations for the naval service for the fiscal year ending June 30, 1884 (22 Stat. L., 477), the Secretary of the Treasury be, and he is hereby, authorized and directed to pay to the legal representatives of John Roach, deceased, out of any money in the Treasury not otherwise appropriated, the sum of \$330,151.42 for labor and material and dockage furnished by said Roach and detention and occupation of his yards and shops by the United States for the gunboats *Chicago*, *Boston*, and *Atlanta*, which sum is in full and final settlement of all claims and damages between the United States and said legal representatives of John Roach, deceased, growing out of the construction of said vessels. (See p. 15, Omnibus claims act, approved April 9, 1898.)

Be it enacted, etc., That, to carry out the provisions of the act making appropriations for the naval service for the fiscal year ending June 30, 1884 (22 Stat. L., 477) to pay to the legal representatives of John Roach, deceased, the sum of \$28,160.25, for labor and material furnished by the said John Roach in completing the dispatch boat *Dolphin*, under the advice and assistance of the naval advisory board mentioned in said act, which amount is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated. (See p. 56, omnibus claims act, approved June 3, 1898.)

Cases where Congress has conferred special jurisdiction on the Court of Claims, looking to the payment of claims of contractors for losses and damages suffered by them in connection with Government contracts.

That the claims for further compensation for the construction of the ironclad monitors *Shawnee*, *Modoc*, *Suncook*, *Yazoo*, *Casco*, *Sandusky*, *Marietta*, *Warsaw*, and *Canonicus*, and of the turrets of the ironclad monitors *Monadnock* and *Agamenticus*, may be submitted severally by the contractors or their legal representatives within one year after the passage of this act to the Court of Claims, under and in compliance with the rules and regulations of said court; and said court shall have jurisdiction to hear and determine and render judgment upon the same: *Provided, however,* That the investigation of said claims shall be made upon the following basis: The court shall ascertain and allow the additional cost which was necessarily incurred by the contractors for building the ironclad monitors *Shawnee*, *Modoc*, *Suncook*, *Yazoo*, *Casco*, *Sandusky*, *Marietta*, *Warsaw*, and *Canonicus*, and of the turrets of the ironclad monitors *Monadnock* and *Agamenticus*, in the completion of the same, by reason of any changes or alterations in the plans and specifications required, and delays in the prosecution of the work: *Provided further,* That such additional cost in completing, and such changes of alterations in the plans and specifications required, and delays in the prosecution of the work were occasioned by the Government of the United States; but no allowance for any advance in the price of labor or material shall be considered unless such advance could not have been avoided by the exercise of ordinary prudence and diligence on the part of the contractors: *And provided further,* That the compensation fixed by the contractors and the Government for specific alterations in advance of such alterations shall be conclusive as to the compensation to be made therefor: *Provided,* That such alterations, when made, complied with the specifications of the same as furnished by the Government aforesaid: *And provided further,* That all moneys paid to said contractors by the Government over and above the original contract price for the building of said vessels shall be deducted from any amounts allowed by said court by reason of the matters hereinbefore stated: *And provided further,* That if any such changes caused less work and expense to the contractors than the original plans and specifications, a corresponding deduction shall be made from the contract price, and the amount thereof shall be deducted from any allowance which may be made by said court to said claimants. (See p. 42, omnibus claims act, approved May 27, 1902.)